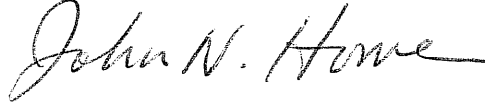


**CITY OF SUNNYVALE
OFFICE OF THE MAYOR**

September 10, 2004

TO: Honorable Members of the City Council

FROM: John N. Howe, Mayor



SUBJECT: Response to the Santa Clara County 2003/2004 Civil Grand Jury Report, "Inquiry into the Formation of an Investigative Subcommittee at a Sunnyvale City Council Meeting"

I am requesting City Council's consideration to ratify the response to the Santa Clara County 2003/2004 Civil Grand Jury's Report on "Inquiry into the Formation of an Investigative Subcommittee at a Sunnyvale City Council Meeting".

Councilmembers may remember at a recent City Council meeting, staff indicated they had researched the Civil Grand Jury response process, and had determined that response needs the formal review of the governing body. Since this new information came after the letter of response that I sent to the Presiding Judge of the Santa Clara County Superior Court regarding this matter, I am asking the City Council to review the Civil Grand Jury's Report, the findings and recommendations, and to comment or ratify the response that I have already sent on behalf of the City Council on July 28, 2004.

According to staff's research and contact with the County Counsel's office, even though my response was not acted upon by the City Council in an open session, the Civil Grand Jury would accept a subsequent ratification of the response placed on a public meeting agenda.

In brief, the Civil Grand Jury conducted an inquiry into the formation of an investigative ad hoc subcommittee on October 7, 2003. The Grand Jury concluded that while the Sunnyvale City Council may have been technically in violation of the Brown Act by allowing an action without being placed on the meeting's agenda, the Grand Jury finds the spirit of the act was not violated by its actions.

The report, including the findings and recommendations, are attached. My letter of response concurred with the two findings and the two recommendations.

Again, I respectfully ask the Council for your ratification of the findings and recommendations of the Mayor's response to the Santa Clara County Civil Grand Jury.

Attachment: Report, including the findings and recommendations.

ATTACHMENT

Report, including the findings and recommendations.

CITY OF SUNNYVALE

The Heart of Silicon Valley

456 WEST OLIVE AVENUE

SUNNYVALE, CALIFORNIA 94086

(408) 730-7470

July 28, 2004

John N. Howe
Mayor

Darr J. Chu
Vice Mayor

Fredrik M. Fowler
Councilmember

Melinda Hamilton
Councilmember

Otto Lee
Councilmember

Julia E. Miller
Councilmember

Ron Swegler
Councilmember

The Honorable Thomas P. Hansen
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Dear Judge Hansen:

We are in receipt of the Grand Jury Final Report, dated May 10, 2004, concerning "Inquiry into the Formation of an Investigative Subcommittee at a Sunnyvale City Council Meeting."

We agree with each of the two findings.

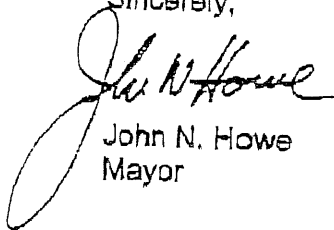
In regard to Recommendations II A and B, they have been implemented as follows.

Recommendation II A: The City Council received the letter from the Grand Jury, dated May 10, 2004, and the Council has and will request more information from the City Attorney, proactively and spontaneously.

Recommendation II B: The Council has required the City Attorney and other legal staff to be more proactive in these matters, and that the City Attorney assert her role as parliamentarian.

If you have any additional questions regarding the above, please feel free to call me at any time.

Sincerely,



John N. Howe
Mayor

JNH/hk

**Response to Grand Jury Report
2003-2004 Civil Grand Jury**

Report Title: **inquiry into the Formation of an Investigative Subcommittee at a Sunnyvale City Council Meeting**

Report Date: **April 16, 2004**

Response by: **Honorable John Howe and** Title: **Mayor and City Council Members**
Members of the City Council

FINDINGS

- ☒ I (we) agree with the Findings numbered: I AND II
- ☐ I (we) disagree wholly or partially with the Findings numbered: _____
(Attach a statement specifying any portion of the Findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- ☒ Recommendations numbered II A AND B have been implemented.
(Attach a summary describing the implemented actions.)
- ☐ Recommendations numbered _____ have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- ☐ Recommendations numbered _____ require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- ☐ Recommendations numbered _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

7/28/04
Date

John N. Howe - Mayor
Signature

JOHN N. HOWE
Print Name

Number of pages attached: _____

2003-2004 SANTA CLARA COUNTY CIVIL GRAND JURY

**INQUIRY INTO THE FORMATION OF AN INVESTIGATIVE
SUBCOMMITTEE AT A SUNNYVALE CITY COUNCIL
MEETING**

Summary

In response to a citizen complaint, the Santa Clara County Civil Grand Jury (Grand Jury) conducted an inquiry into the formation of an investigative ad hoc subcommittee during the Sunnyvale City Council (Council) meeting that took place on October 7, 2003.

The 2003-2004 Grand Jury concluded its inquiry with two findings and two recommendations. The recommendations, if adopted, will improve the Council's adherence to the Charter of the City of Sunnyvale (Charter) and state law.

Background

The president of the Police Service Officers Association (PSOA) addressed the Council during the *Citizens to be Heard* category of the meeting. He requested that the Council investigate the actions of the vice mayor and the city manager, alleging the use of undue influence during a police incident that had taken place at a downtown Sunnyvale establishment over the 2003 Labor Day weekend.

In response, the mayor* formed an ad hoc subcommittee to investigate the charges. Although one council member questioned the mayor's authority to do so, the mayor expressed the right to form such a subcommittee, citing the City of Sunnyvale Code of Conduct for Elected Officials (Code). The city attorney did not voice an objection.

The investigative subcommittee met on several occasions subsequent to October 7, 2003. The result of its investigation found the vice mayor not to be in violation of the Charter, but to have demonstrated poor judgment in the matter brought forth by the PSOA.

The complainant claimed that the Charter, under Section 807, prohibited the formation of such a subcommittee without the affirmative vote of at least four council members, and was also a violation of the Ralph M. Brown Act (Brown Act).

* The City of Sunnyvale, similar to *General Law* cities, selects by motion, the positions of mayor and vice mayor from Council members every year.

Discussion

The relevant section of the Code, "Councilmembers Behavior and Conduct," upon which the mayor based her authority to form an ad hoc investigative subcommittee, reads as follows:

"If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the *next* appropriate action. These actions can include, but are not limited to:

- Discussing and counseling the individual on the violations;
- Recommending sanction to the full Council to consider in a public meeting;
- Forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration."

The transcript (*reference documents*) of the October 7, 2003 Council meeting indicates that the mayor had not performed the required action in the Code, that is, to "ask the City Manager and/or City Attorney to investigate the allegation...." in order to take the *next* action of forming a council ad hoc subcommittee.

Conclusion

Examination of the Code did not uphold the mayor's assertion that it gave the mayor the authority for the formation of a subcommittee without a prior investigation by the city manager and/or the city attorney. It is also the opinion of the Sunnyvale City Attorney that the mayor's interpretation and reliance upon this section for the purpose of unilaterally forming an ad hoc subcommittee was not valid.

Examination of the Charter Section 807 is not relevant in that it deals mainly with Council member interactions "with officers and employees in the administrative service under the jurisdiction of the City Manager" and not Council members. Although some exceptions are listed, none apply in this case.

The formation of the ad hoc subcommittee was brought forth during the *Citizens to be Heard* category and as such was not on the public agenda. Since proper notice was not given to the public for the meeting that night, it would appear to be a violation of the Brown Act, Section 54954.2, that is, "No action or discussion shall be undertaken on any item not appearing on the posted agenda...."

The Sunnyvale City Council may have been technically in violation of the Brown Act by allowing an action, specifically the formation of an ad hoc subcommittee, to take place during the October 7, 2003 Council meeting without the action being placed on the meeting's agenda and properly publicized to the general public. However, the Grand Jury finds that the spirit of

the act was not violated by its actions, particularly since the investigative subcommittee meetings were open to the public.

Finding I

The mayor was not authorized under the Charter or Code to unilaterally form an ad hoc investigative committee during the council meeting of October 7, 2003, without first requiring an investigation by the city manager and/or the city attorney.

Recommendation I

None

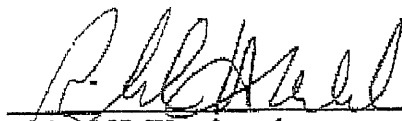
Finding II

The City Charter does not explicitly bar the city attorney from offering unsolicited legal advice, either verbally or in writing, on matters before the Council.

Recommendation II

- A. The Council should consult the city attorney on the validity of procedural matters.
- B. The Charter should be interpreted such that the city attorney should be outspoken in giving advice on the validity of procedural matters.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 16th day of April 2004.



Richard H. Woodward
Foreperson

References

Documents

Charter of the City of Sunnyvale, as amended November 30, 1995.

City of Sunnyvale Code of Conduct for Elected Officials.

Ralph M. Brown Act, Govt. Code Section 54950, et seq. (Open Meeting Law)

Report to Mayor and Council No. 0304 CA dated November 11, 2003.

Video and written transcript of the October 7, 2003 Council meeting.

Interviews

Meeting with Sunnyvale City Attorney on January 27, 2004

Meeting with a Sunnyvale Council Member on March 24, 2004